Property Claims

SELF HELP TOOLKIT

PRISONERS' ADVICE SERVICE

JUSTICE BEHIND BARS

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The Legal Education Foundation

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Property Claims

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If my property has been lost or damaged in prison can I take legal action?

Yes. You can go to court to resolve such an issue.

Should you take legal action in court?
Going to court should always be a last resort and it can be difficult to do this whilst in prison.

If you make a claim through the court without making any effort to reach an agreement first, the judge may hold this against you when considering which party will pay any costs in the case. For example, your claim may be struck out; you may not get your costs back or the court may order you to pay the other party's costs, even if you do win the case overall.

How do I try to sort out my dispute without going to court?
For disputes relating to matters in prison, you should follow the internal complaints procedure first (using form(s) COMP1 &/or COMP1A and if you believe the items were on your property cards you should ask for a copy of your property cards. You do not have to pay for these copies. Further information on your rights to access your information can be found in our *Access to Information* sheet, available from our office upon request.

It is important to ensure that the property in dispute is authorised and has been recorded on your property card.

You can submit an initial application to the governor of each prison that you think might be responsible for the loss. This should include:

- details of each item of lost property you are seeking compensation for
- how each item of property was lost and why you think the prison is responsible
- where and when the items were purchased and the replacement value of each item

You should include receipts as supporting evidence, where possible, or statements from the person that purchased and/or gave you the item. If you purchased the item through the mail order system in prison using your prison

spends account you might ask for a record of the mail orders and a copy of your prisoner account statements. You should state the compensation you are seeking – this will be based on the replacement value of the property at the time that it was lost or damaged.

If your initial claim for compensation is refused, you can appeal via the complaints system by using the internal complaints procedure. If you are unhappy with the responses you receive, and you wish to take the application further, you can refer the matter to the Prison and Probation Ombudsman for investigation. Their address is: PO Box 70769, London, SE1 4XY. You must do this within three months.

Usually the Prison Service accepts Ombudsman recommendations. However, if the Ombudsman makes any recommendations in your favour, the Prison Service does not have to act on them. Nevertheless any supportive recommendations will be strong evidence in any legal action which you may pursue.

You do not have to accept the Ombudsman findings if they undervalue your loss or disagree with the evidence in your case; you can ask them to review their finding.

You are not obliged to escalate your complaint to the Ombudsman. You can start court action once you have received a response to your COMP1A. .

How do I take legal action?

You can file a claim in the County Court. Prior to doing this, you should send a pre-action letter. If you are in a state prison the letter should be sent to the Government Legal Department, 102 Petty France, Westminster, London SW1H 9GL (who represent the Prison Service). If your claim relates to a private prison, it should go to the prison's solicitors; you should be able to get this information from the private prison.

This pre-action letter should set out exactly what you are claiming for and give them a reasonable timescale (for example 21 days) within which to respond and settle the claim with you or face litigation. You should attach copies of evidence (for example the COMP1 & 1A forms and responses, PPO complaints and responses, and your property cards) that support your claim, with a view to encouraging the legal team to settle your case and avoid litigation. You should also send a copy of this letter to the Director or Governor of the prison to keep them in the loop.

<u>It is very important that you keep a copy of all the evidence and paperwork in your case.</u>

If you do not get a positive response to your pre-action letter, you can proceed with issuing the claim.

How do I issue a claim?
If the claim is for a sum of money, you will need to submit an N1 Claim Form (located within the centre of this pack) to the Civil National Business Centre, St Katharine's House, 21-27 St Katharine's Street, Northampton, NN1 2LH. Their telephone number is 0300 123 1372 and operates from 08.30am-5.00pm each Monday to Friday. This number is active on all prisoners' pin phone accounts.

You need **one** N1 Claim Form for each defendant you are claiming from, as well as **one** for the court and another **one** to be sealed by the court and returned to you. For example, if there is only one defendant, you will need to submit **three** N1 Claim Forms to the above address.

You must always keep a copy of any documents you send to court or the defendant.

How do I complete the claim form?
Please see the 'Notes for claimant on completing a claim form' which is located within the centre of this booklet, with claim forms to be extracted and filled in. If these are missing, please contact PAS and we can send you some.

When filling out the Claim Form, you should also note the following:

The claim is for **Trespass to Goods** under the common law, and under the Torts (Interference with Goods) Act 1977. In order to issue a claim, you need to prove that the prison had control of your property in prison (e.g. evidence of the property on your property cards). The responsibility then shifts onto the MoJ/company running the prison to explain what happened to the property and prove that they have not lost or damaged it.

For claims against a state prison:

- the defendant is the Ministry of Justice (MoJ) – not the Secretary of State for Justice (SSJ) and not the individual prison governor or director;
- the address of the Prison Service for the purpose of your claim is: Government Legal Department, 102 Petty France, Westminster, London SW1H 9GL

For claims against a private prison:

- the defendant is the company who runs it (e.g. G4S, Serco) not the individual prison director;
- the address of the defendant is the company's Head Office or its solicitors – you will need to obtain this information from the private prison.

Under section 2 of the Limitation Act 1980, the limitation period for a tort claim is 6 years from the date of the loss or damage.

How do I know the value of the claim?
Compensation is based on the value of the property at the time that it was lost or damaged (which may be a different value to the purchase price).

In some cases, you may not be able to say exactly what the value of the claim is. For example, if you are claiming damages for the loss of family photographs that cannot be replaced.

However, you might know that you are unlikely to recover damages beyond a particular amount – in that case, you must say under the 'Value' section on the claim form that the Claimant expects to recover more than £1,000 but not more than £1,500.This is known as a claim for an 'unspecified amount of money'.

Can I claim interest on the money owed to me?
Yes. If you want to claim interest, you should include the following text at the end of the section of the Claim Form titled 'Particulars of Claim':

> *The Claimant claims interest under section 69 of the County Courts Act 1984, to be assessed at a rate and for such a period as the court sees fit.*

Are there any Court Fees and do I have to pay the Fees?
There is always at least one fee for lodging a claim in the courts.

Depending on what happens after you have brought the claim there may be other court fees, for example a hearing fee or a fee for making an application to amend your claim form. Further information on the fees you may have to pay is contained in EX50 Court Fees booklet (an extract of which is contained in this toolkit). It is important that you read this to understand when a fee needs to be paid.

For any court fee that you are required to you must either pay the fee or make an application for help with fees if you are eligible for a fee remission.

As you are in prison, you may be eligible for a fee remission and so be exempt from paying the court fees associated with filing a claim. However, you are still subject to the same tests as any other applicant who has a very low income.

The fee remission system is based on two different tests: the first test assesses your household and disposable capital, e.g. your savings; if you pass this test, the second test assesses your monthly income before tax. You will have to pass both tests to be eligible for a fee remission.

The disposable capital threshold and income of the prisoner (whether the applicant, or the applicant's partner) must be included in your application.

You must provide the court with the following evidence:

- A copy of the your Prisoner's Income and Expenditure Statement (PIES);
- Evidence of any other income not declared on the PIES; and
- Evidence of the (non-prisoner) partner's income (if applicable).

The financial circumstances of you and your partner (if applicable) will be considered together in determining whether you qualify for a fee remission.

How do I obtain a fee remission?
You will need to fill out an application for a fee remission in Form EX160, and send it to the court office that is dealing with your claim.

Further guidance on how to fill out the Form EX160 can be found in the EX160A, both the form and the guidance should be located in the centre of this booklet, or you can request them from PAS.

To prevent delay, you must provide all the required evidence, correctly and within date, with your application form. The application will be refused if you do not provide evidence, and you will have to pay the full court fee when you lodge your claim as otherwise the court will reject the claim.

What happens after I have sent my claim to the court?
When the court has received and issued your claim, the court will send you a Notice of Issue. They will also send a copy of your claim to the defendant.

The defendant is then given the options of admitting, defending, or partly admitting your claim.

What happens if the defendant does not respond to my claim?
What you can do depends on whether you claimed a 'specified amount' or an 'unspecified amount' of money in your claim form.

<u>If you have claimed a specified amount of money</u>, you must wait until the date by which the defendant must reply to your claim has passed before you can take any action. This date will be shown on your Notice of Issue, which the court sends you after you started the claim.

If you have not had a reply by this date, you can ask the court to 'enter judgment by default' – this means the court orders the defendant to pay you the amount you have claimed, and you 'win' the claim. You should do this as soon as the date by which the defendant must reply has passed – the defendant can still

reply to your claim, even if this date has passed, until the point that the court receives your request. Therefore, if the defendant's reply is late but it arrives on or before the date of your request, it will still have priority and the defendant will continue to defend your claim.

In order to apply to 'enter judgment by default' you will need to fill in the bottom half of your Notice of Issue that the court sent you when you made your claim. You can tick Section A ("The defendant has not filed an admission or defence to my claim or an application to contest the court's jurisdiction") and fill in the details in Section D ("Judgment details").

The court may only grant judgment by default where:

- the defendant has not filed an acknowledgment of service or a defence to the claim; and
- the relevant time for doing so has expired.

However, the court only has a discretion to grant judgment by default – you are not entitled to it as of right.

It is worth noting that you should request judgment by default within six months of the defendant's reply date. If not, your claim will be 'stayed' (i.e. stopped) by the court. The only way to continue your claim after this period is to apply to the court for an order to 'lift the stay'. There may be an additional fee for this.

If you have claimed an unspecified amount of money, you can ask the court to make an order in your favour against the defendant. This is known as asking the court to 'enter judgment for an amount to be decided by the court'. This will mean that the defendant is liable (i.e. responsible) for your claim.

To apply for the entry of judgment for an amount to be decided by the court, you must fill in the bottom half of the Notice of Issue that the court sent to you when you first made your claim. When the court has received your request, it will be referred to a judge who will decide whether a court hearing is needed or whether the decision can be made on the paper application alone. The judge will also decide whether there is anything further you will need to do, such as provide particular evidence, to help the judge decide how much money you are entitled to for the claim.

Once the judge has decided how much money you are entitled to, both you and the defendant will be sent a Court Order. This Order will state that you are entitled to 'judgment on liability' and will give 'directions' (i.e. instructions) made by the judge. The Order may include a hearing date for your claim.

What happens if the defendant still does not pay?

If the defendant still does not pay you, you can ask the court to take further action by 'enforcing the judgment'. Importantly, the court will not do this automatically; you will need to ask the court to enforce the judgment.

If you decide to request enforcement of the judgment, you may have to pay another fee. If so, this fee will be added to the sum the defendant already owes you.

What happens if the defendant admits my claim?
This will depend whether you have claimed a specified or an unspecified amount.

If you have claimed a specified amount, you will have received the defendant's admission form which states that they admit to owing you money. You should look at the form to see whether the defendant has requested extra time to pay the money owed to you – if so, you must decide whether or not you agree to this.

If you have claimed an unspecified amount, you will have received a Notice of Admission which states that the defendant admits to being legally responsible for the payment. Usually, either the defendant will offer a fixed amount of money to settle the claim and you will have to decide whether or not to accept this offer and any suggestions made for payment, or the defendant will admit the claim without saying the sum that is admitted.

Can I refuse the defendant's request to have extra time to pay?
Yes. However, it is important to bear in mind that you may be more likely to get the money if you allow the defendant to pay over a longer period of time. However you should bear in mind that prisons are a public authority and therefore have the means to pay, though they may delay in making this payment to you.

Which form you need to fill in depends on whether you claimed a specific or unspecified amount of money:

> If you claimed a specific amount, you will need to fill in the bottom section of the Notice of Issue that you were first sent when you issued the claim.
>
> If you claimed an unspecified amount, you will need to fill in the Notice of Admission which you received from the defendant.

On either form, you must explain why you object to giving the defendant extra time to pay the sum owed to you.

You will then need to send your form, together with a copy of the defendant's Admission form, to the court. If possible, you should keep copies of the forms for your own records.

The court will then consider the defendant's reasons as well as your objections, and decide what is reasonable for the defendant to pay. Once it has come to a decision, the court will send you and the defendant a 'judgment for claimant after determination' with details of what the defendant must pay.

You, or the defendant, can object to the new judgment. If you wish to object, you must write to the court within 14 days and must send a copy of this written objection to the defendant. If the defendant objects, he must also do so within 14 days and send a copy of the written objection to you. There is no fee for objecting. A judge will then decide what is reasonable; they may call you and the defendant to a hearing, or they may make a decision straight away based on the written evidence. In either event, the court will send you and the defendant the judge's decision.

What if I accept the defendant's offer?

If you and the defendant agree on the sum owed, you can ask the court to 'enter judgment on admission' – meaning that the court will order the defendant to pay you the amount agreed, including any fees incurred as part of the claim such as the fee paid when issuing the claim.

Which form you need to fill in depends on whether you claimed a specified or unspecified amount:

If you claimed a specified amount, you will need to fill in the bottom section of the Notice of Issue that you were first sent when you issued the claim, and then send it to the court.

If you claimed an unspecified amount, you will need to fill in the Notice of Admission and send it to the court.

Once the court has received your request, they will complete a 'judgment for claimant' and send you and the defendant copies of the judgment; this will give the defendant details of the money they owe you.

What if I do not accept the defendant's offer?

If you do not accept the amount the defendant has offered, you should fill in the bottom half of the Notice of Admission and send it to the court.

Once the court has made a decision about how much money you are entitled to, the court will send an Order to you and the defendant with any directions (i.e. instructions) given by the judge. The Order may include a date for a hearing.

What if the defendant admits the claim but does not say how much they admit to?

If the defendant does not specify an amount, you can ask the court to 'enter judgment for an amount to be decided by the court' – i.e. the court will decide the amount the defendant should pay you, and the court will then make an order that the defendant pay you that amount.

To request this, fill in the bottom half of the Notice of Admission. You should send it to the court and send a copy to the defendant.

Importantly, you should check the Notice of Admission for the date by which the court needs your reply. If your response is late, your claim may be 'stayed' (i.e. stopped). After this date, the only way to apply for entry of judgment is to apply first for an order to 'lift the stay' (i.e. resume the claim), and there may be a fee for this.

Once you have submitted the Notice of Admission, your claim will be referred to a judge. The judge will make a decision about how much money you are entitled to, and you and the defendant will be sent an order with any directions (i.e. instructions) given by the judge. The order may include a date for a hearing or trial.

What happens if the defendant disputes (i.e. disagrees with) my claim?

If the defendant disputes your claim, they will send their defence to the court. Usually, the defendant will have 14 days from service of the claim form and Particulars of Claim in which they must return the defence. However, they may have up to 28 days to file their defence if they file an Acknowledgment of Service within 14 days of service of the claim form and Particulars of Claim. They may also apply to the court for an extension beyond 28 days – the court will usually grant such extension. If this happens, the court will let you know. If

There are a number of ways the defendant can dispute your claim. They can:

- defend all of the claim;
- defend part of the claim, and admit part of the claim;
- claim that they have already paid what they owe you.

Further or alternatively to this, the defendant may 'counterclaim', which means that they claim that you owe them money. This can be done whether the defendant defends all of the claim, defends part of the claim and admits part of the claim, or admits all of the claim.

What if the defendant does not file a defence in time?

Even if the defendant has 28 days (or a further agreed extended period) to file their defence, rather than 14, they must still do so by the deadline.

If the defendant does not file their defence in time, what you can do depends on whether you claimed a 'specified amount' or an 'unspecified amount' of money.

If you have claimed a specified amount of money, you must wait until the date by which the defendant must reply to your claim has passed before you can take any action. This date will be shown on your Notice of Issue, which the court sends you after you started the claim.

If you have not had a reply by this date, you can ask the court to 'enter judgment by default' – this means the court orders the defendant to pay you the amount you have claimed, and you 'win' the claim. You should do this as soon as the date by which the defendant must reply has passed – the defendant can still reply to your claim, even if this date has passed, until the point that the court receives your request. Therefore, if the defendant's reply is late but it arrives on or before the date of your request, it will still have priority and the defendant will continue to defend your claim.

In order to apply to 'enter judgment by default', you will need to fill in the bottom half of your Notice of Issue that the court sent you when you made your claim. You can tick Section A ("The defendant has not filed an admission or defence to my claim or an application to contest the court's jurisdiction") and fill in the details in Section D ("Judgment details").

The court may only grant judgment by default where:

- the defendant has not filed an acknowledgment of service or a defence to the claim; and
- the relevant time for doing so has expired.

However, the court only has a discretion to grant judgment by default – you are not entitled to it as of right.

It is worth noting that you should request judgment by default within six months of the defendant's reply date. If not, your claim will be 'stayed' (i.e. stopped) by the court. The only way to continue your claim after this period is to apply to the court for an order to 'lift the stay'. There may be an additional fee for this.

If you have claimed an unspecified amount of money, you can ask the court to make an order in your favour against the defendant. This is known as asking the court to 'enter judgment for an amount to be decided by the court'. This will mean that the defendant is liable (i.e. responsible) for your claim.

To apply for the entry of judgment for an amount to be decided by the court, you must fill in the bottom half of the Notice of Issue that the court sent to you when you first made your claim. When the court has received your request, it will be

referred to a judge who will decide whether a court hearing is needed or whether the decision can be made on the application alone. The judge will also decide whether there is anything further you will need to do, such as provide particular evidence, to help the judge decide how much money you are entitled to for the claim.

Once the judge has decided how much money you are entitled to, both you and the defendant will be sent an order. This order will state that you are entitled to 'judgment on liability' and will give 'directions' (i.e. instructions) made by the judge. The order may include a hearing date for your claim.

What happens if all of the claim is defended?

If the defendant has filed a defence against your claim or you have disagreed with the amount the defendant has offered and wish still to pursue the claim, the court will send you and the defendant a copy of the defence together with a 'Notice of Provisional Track Allocation' and a 'Directions Questionnaire'. All property claims with a value of £10,000 or less will be allocated to the Small Claims Track.

The Directions Questionnaire is for you to help the court decide how your claim should be dealt with, and will help a judge decide whether the track the claim is provisionally allocated to is correct. You should read the notes for guidance on the form before you fill it in.

You should contact the defendant to discuss the information you are going to provide in the form before returning it to the court. You must return the form to the court by the date given, or the court may impose a penalty. Even if the defendant does not cooperate, you should still fill in the form and return it to the court by the deadline in order to avoid a penalty.

Do I have to discuss the Directions Questionnaire form with the other side?

The judge will expect you and the defendant to cooperate with each other when filling in the Directions Questionnaire. Both sides should make sure that they have contacted each other to discuss filling in the form. This onus is greater on the defendant where the claimant is a litigant in person, but the litigant in person is still expected to engage fully.

The court will expect you to discuss, and where possible agree, matters such as:

- whether the case can be settled, or not;
- whether some form of Mediation or other Alternative Dispute Resolution would be suitable, or not;
- how long you think the hearing will last;
- how long you think you will need to prepare your case;
- time frames and arrangements for exchanging evidence.

The Directions Questionnaire asks whether I would like the court to arrange a mediation appointment with the Small Claims Mediation Service – what is this?

The Small Claims Mediation Service is provided by the court, free of charge. If you want to use this service to help you settle your dispute, you should say so on the Directions Questionnaire.

Mediation is a way of sorting out disputes without a court hearing – it is a form of Alternative Dispute Resolution. Under the Civil Procedure Rules, both sides should make every effort to settle their case, and at the stage of filing the Directions Questionnaire you should still think about whether you and the defendant can settle the dispute without going to a hearing. Mediation will avoid further court fees, costs and time incurred by you and the defendant in preparing and going to a hearing.

If you can reach a settlement, you may enter into a binding agreement which can be enforced if the terms of the agreement were to be broken. This enforcement is the same as enforcement of a judgment made by the court following a hearing. This can also be called a Consent Order.

If you and the defendant agree to go to mediation to try and reach a settlement, but are unable to agree, you can still have a court hearing.

What happens once the court receives the Directions Questionnaires?

The judge will look at the information that has been provided, and decide accordingly how the case should move forward. The judge will take into account the contents of the claim form and Particulars of Claim, the Defence and the Directions Questionnaire as well as specifically the amount in dispute, the timetable and the evidence needed.

Two things of importance happen following the filing of the Directions Questionnaire:

- the judge will decide on allocation of the claim to the relevant track;
- the judge may give directions (i.e. instructions) as to the management of the case.

Rarely will there be an issue about allocation in property claims as these claims are highly unlikely to exceed £10,000 i.e. the maximum value of a claim which can be dealt with in the Small Claims Track. You will therefore know from the outset that if your claim is under £10,000, it *will* be allocated to the Small Claims Track.

More significantly, the judge may give directions as to the management of the case prior to the hearing. These directions may include:

- instructions to send further evidence to the court and to the defendant, and when this must be done by;
- information about mediation if either you or the defendant has asked for mediation in the Directions Questionnaire, or the judge thinks the case is suitable for mediation;
- information about the date and place of the hearing and how long the judge thinks the hearing will take.

I have been informed that a preliminary hearing has been scheduled – what does this mean?

In some situations, a judge might decide to hold a preliminary hearing instead of setting a final hearing date at the allocation stage.

This usually happens if:

- the case requires special or unusual steps to be taken that the judge wants to explain personally to the parties to the claim;
- the judge feels that either side has no real prospect of winning the case, and wants to close the case as quickly as possible to save time and money;
- the claimant does not show reasonable grounds for bringing the claim, or the defendant's case does not show any reasonable grounds for defending it, and the judge wishes to strike out the claim.

Your notice of allocation or listing hearing will inform you if you need to go to a preliminary hearing.

Will there always be a hearing?

No. The judge may decide to deal with your case without a hearing. If so, you will be sent a 'notice of allocation to the Small Claims Track (no hearing)'. The notice will inform you that the judge thinks your case can be dealt with without a hearing and only on the basis of the written evidence provided by the parties.

The notice will ask you to notify the court if you object, and will provide a date by which you must do this if you do object. If you or the defendant objects, the case may be dealt with at a hearing. If you do not reply by the date stated in the notice, the judge may treat your lack of reply as permission to proceed to decide the case based on the written evidence only.

If there is a hearing, can I attend?

Yes. You can apply for Release On Temporary Licence (ROTL) if you are eligible, particularly if you are in open conditions. Otherwise you need permission from the prison to escort you to the hearing. The prison has to assess whether it is in the interests of justice for you to be produced, balanced with security constraints. You may have to pay towards the cost of your escort but your ability to pay cannot be taken in to account when assessing an

application for production in civil proceedings. Further information is contained in PSO 4625 Productions in Civil Proceedings, available from your prison.

Often videolink and three way telephone facilities are available which would suffice to enable you to partake in the hearing. It is not unreasonable for a prison to refuse to produce you if these facilities are available. Increasingly though, hearings are being conducted over phone, with the parties' prior agreement.

Can a hearing go ahead without my attendance?

Yes. If you do not want to attend the hearing, either in person or by videolink/telephone, you can request the court deal with the claim in your absence. To do this, you must write a letter to the court and provide the claim number, the date of the hearing and the reason why you will not be attending. You should also ask the court to make a decision on the case in your absence using any written evidence you have provided. You must pay careful attention to the evidence you submit, as the judge will be basing their decision on this.

This letter must arrive at court no later than 7 days before the hearing date. You must also send a copy of the letter to the defendant.

What should I do in preparation for the hearing?

To prepare for the hearing, make sure you comply with all directions (i.e. instructions) made by the judge up to the stage of the hearing. If you have been instructed to send particular documents to the defendant and the court, do not send the originals of these documents – send copies, and bring the originals with you to the hearing.

During the hearing, you will only have a limited amount of time to put your case to the judge. Prior to the hearing, you should:

- Go through all the paperwork you have submitted to the court regarding the claim, and all the paperwork you have received from the defendant in response.
- Make sure any documents you want to refer to are in the right order.
- Make a note of the things you want to say, and the order in which you wish to say them.
- Make a note of your responses to any issues that have been raised, or may be raised, by the defendant.

If at any point you become unsure, you should ask the judge for guidance.

Where will the hearing take place?

Small claims hearings will either be held in a court room, or in the judge's chambers. The hearings are quite informal and held in public.

A judge *may* agree to hear your case in private, where no members of the public can sit and hear the case. This may happen if:

- both sides agree;

- publicity would defeat the object of the hearing;
- the hearing involves confidential information; or
- the court considers that it is necessary in the interests of justice.
- The principle of 'open justice' where court hearings should be held in public, is not usually deviated from, however.

What will happen at the hearing?
The judge will speak first to check who you are, and whether you are the claimant or the defendant. Judges expect to be addressed as 'Madam' if female and 'Sir' if male.

The judge will invite you to be seated, and will proceed to explain how the hearing will be carried out. This varies from case to case. You can address a District Judge as 'Sir' or 'Madam' not 'Your Honour'.

Usually, the judge will ask the claimant to speak first and set out any reasons or evidence to support their claim; the defendant will then be given an opportunity to ask the claimant about the statement and the evidence.

Then, each side will be given an opportunity to ask each other questions.

At the end of the hearing, the judge will tell both parties their judgment (i.e. the decision the court has reached) and provide reasons.

What happens after the hearing?
After the hearing, you and the defendant will be sent a copy of the judgment. The judgment will set out the judge's decision, the reasons and any order for costs that was made. If the claim is successful, the judgment will also include the arrangement for payment.

If you told the court that you would not be attending the hearing, or that the matter should be decided on the papers, you will also be provided with the judgment.

If the defendant has been ordered to pay you money, but does not pay, you can ask the court to take further action by 'enforcing the judgment'. Importantly, the court will not do this automatically; you will need to ask the court to enforce the judgment. If you decide to request enforcement of the judgment, you may have to pay another fee. If so, this fee will be added to the sum the defendant already owes you.

How soon can I enforce judgment?
A judgment takes effect from the day it is made (or such later date as the court may specify). This means that if a judge makes an order today, the parties are immediately bound by the decision – you are not bound from the time when the judgment is written up which could be a number of days afterwards.

This means that judgment can be enforced 'immediately' – i.e. once 14 days has passed.

The general rule is that a party must comply with a judgment or order for the payment of an amount of money, which may include costs, within 14 days of the date of the judgment order. However, the general rule does not apply if:

- the judgment or order specifies a different date for compliance, including specifying payment by instalments; or
- the court has 'stayed' (i.e. stopped) the proceedings or judgment of its own volition or upon the application of one or both parties.

If I am not happy with the decision – can I appeal?

If your claim is not successful, and you wish to appeal against the judge's decision, you will need to obtain permission to do so.

If you attend the hearing at which the decision is made, you can ask the judge for permission at the end of the hearing.

If the decision is made in your absence because you gave notice asking the court to deal with the claim in your absence, or the claim was decided without a hearing, you can obtain permission to appeal in your Appellant's Notice.

Permission to appeal may *only* be granted where:

- the court considers that the appeal has a real prospect of success; or
- there is some other compelling reason why the appeal should be heard.

You cannot appeal merely because you think the judge's decision is wrong. There must be grounds for appeal in accordance with the Civil Procedure Rules, namely that the judgment was either:

- wrong in law; or
- unjust because of a serious procedural or other irregularity.

What is an Appellant's Notice, and how to I file it?

If you have permission from the judge to appeal and are ready to issue your appeal, you must fill in the Appellant's Notice (except the sections on permission) and send it with the appropriate fee to the appeal court**.** This is known as 'filing an appeal'.

If you do not have permission because the decision is made in your absence or the claim was decided without a hearing, you must fill in the Appellant's Notice including the sections on permission and send it with the appropriate fee to the appeal court.

You must file the Appellant's Notice:

- within the time limit set out by the judge whose judgment you are appealing against;
- if the judge does not set out a time limit, within 21 days of the judgment you wish to appeal.

You must include enough copies of the Appellant's Notice and the supporting documents as indicated in the guidance notes accompanying the Appellant's Notice.

What if 21 days has passed – can I still appeal?

You can make an application to appeal out of time, but it is generally not a good idea to rely on this unless there are exceptional circumstances for such an application. The civil courts take compliance with time limits laid out in court orders and the Civil Procedure rules very seriously. With prisoner litigants in person it can be argued that prison mail delays, difficulties accessing legal reference material and photocopying for example should be considered as exceptional circumstances.

If you wish to apply to appeal out of time, the application should be made using the Appellant's Notice.

Applications for extensions of time to appeal are considered applying the principles on relief (i.e. exemption or discharge) from sanctions under Civil Procedure Rule 3.9 as set out in the three stage test in *Denton v TH White Ltd* [2014]:

1. ***Identifying the default and assess its "seriousness or significance"*.** Relief will usually be granted for breaches which are neither serious nor significant.

2. ***Considering why the default occurred*** – i.e. is there a good reason for not applying within the 21 day time limit?

3. ***Considering all the circumstances of the case, so as to enable the court to deal justly with the application***. The court will consider in particular the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and court orders.

Your application to appeal out of time should address each of these stages in the test – if not, it will likely be unsuccessful.

Can I include new evidence in my appeal?

You cannot introduce new evidence in your application without the appeal court's permission. New evidence is evidence that was not used at your hearing, or which has become available since then.

If I appeal, which court do I appeal to?

If judgment was made by a District Judge in a County Court claim, your appeal will be dealt with by a Circuit Judge in the County Court. You must file your Appellant's Notice with the office of the court that was previously dealing with your claim.

If your decision was made by a Circuit Judge in a County Court, your appeal will be dealt with by a High Court judge. The appeal will be heard in an appeal or hearing centre. You must file your appeal in an appeal centre which is in the same geographical justice area as the County Court which was previously dealing with your claim. You can find out from the County Court the contact details of the appeal centre for your case.

Can you have your claim struck out or be made liable to pay the other side's costs?

You can be liable for the other side's costs even if you win. Ordinarily you can only be liable for limited costs if the claim is allocated to the small claims track. However if the court deems you to have acted unreasonably then the court can strike out your claim and/or require you to pay the other side's full costs which may run into thousands of pounds. The court might deem you to act unreasonably if for example you have issued a claim without exhausting the internal complaints procedure, or without writing a pre-action letter or you have not tried to settle the claim or you have not paid court fees or not complied with court rules/orders/directions (e.g. by not paying a court fee or making a help with fees application, not submitting court documents e.g. a valid claim form, valid particulars of claim, a list of standard disclosure or a witness statement).

The following section (with guidance notes) is designed to be removed and completed by you. If this has already been used, or is missing, please contact us.

PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

JUSTICE BEHIND BARS

PAS offers free legal advice and information to adult prisoners throughout England and Wales regarding their rights, conditions of imprisonment and the application of the Prison Rules.

We pursue prisoners' complaints about their treatment in prison by providing advice and information and, where appropriate, taking legal action.

Examples of issues we can advise on include: parole, temporary release, indeterminate sentences, categorisation, adjudications, sentence calculation, licence and recall, discrimination, resettlement and healthcare matters. We also provide advice on Family Law to female prisoners and on Immigration Law to prisoners with issues relating to detention or deportation.

If you have something that you'd like to discuss with one of our Caseworkers, you can write to us at:

Prisoners' Advice Service
PO Box 46199
London EC1M 4XA
(Mark your envelope *Legal Mail Rule 39* in all correspondence with PAS)

Call us Monday, Wednesday or Friday
between 10am and 12.30pm or 2pm and 4.30pm, or Tuesday evening between 4pm and 6pm on
020 7253 3323

We produce the quarterly Prisoners' Legal Rights Bulletin, which shares information about key cases and changes in Prison Law, and is free to prisoners. To sign up for this, please write to the address above.

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